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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,632	01/28/2004	Louie V. Harrison III	331860.9US	3747

36536 7590 12/13/2007  
WYATT, TARRANT & COMBS, LLP  
1715 AARON BRENNER DRIVE  
SUITE 800  
MEMPHIS, TN 38120-4367

EXAMINER
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WERNER, JONATHAN S

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/766,632	Applicant(s) HARRISON, LOUIE V.	
	Examiner Jonathan Werner	Art Unit 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2,3,5,6,8-10,12 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-3,5-6,8-10,12,46-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 2-3, 5-6, 8-10, 12, and 46-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "generally T-shaped" and other similar phrases in claim 46 use a relative term which renders the claim indefinite. The term "generally" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3, 5-6, 8-10, 12 and 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiesel (US 6343932) in view of Subelka et al. (US 2003/0060532) and further in view of Cohen (US 4,795,527). Wiesel discloses a

restoration procedure kit with a unit package for carrying and applying a dental composite (Column 6, lines 5-18). The dental composite (16) is carried on a carrier film (12) with an enlarged central portion (14) that is covered by a film covering (18) that is releasably sealed to the carrier film adjacent the composite (Figs. 1 and 2). There is a delivery side and a spatulating side. The cover is in direct contact with the composite and is designed with a surface of non-adhesive release material (Column 4, lines 53-58). It is also disclosed that a non-adhesive release coating may be applied for easier release (Column 5, lines 1-4). The carrier film is an elongated strip with laterally and longitudinally extending incisal tabs (22 and 24) from the central portion that are able to fold under the central portion of the carrier film and also wrap around the edges of the teeth with applied since they can be cut to fit specific lengths (Figs. 2 and 3, Column 3, lines 60-65). The unit packages can be made singly, or come in a plurality of adjacent packages in a long roll that can be individually cut out when needed (Column 3, lines 60-64). The carrier film can be translucent if light activation of the applied composite is necessary (Column 4, lines 21-24). The unit package also includes an outer strip (20), on which the carrier strip is disposed, and is releasably sealed to the adjacent cover. Wiesel does not disclose that the unit dose disposed on the delivery side of the carrier is curable dental restorative composite. However, it is noted that Column 6, lines 5-18 of Wiesel indicates that the delivery system can be used to deliver other common dental agents. Specifically, Subelka et al. teaches in paragraphs 0027-0028 a carrier (10) which holds a unit dose of such a dental agent - namely a dental restorative composite (11). Therefore, it would have been obvious to one having ordinary skill in the art at the

time of Applicant's invention to make the material disposed on the carrier a dental restorative composite in order to use said material in a tooth restoration procedure. Furthermore, Wiesel shows the entire bottom length of the delivery unit (22 or 24) is an underlying incisal tab. The terminal ends of the same tabs are embrasure tabs since they can be cut to fit and capable of wrapping around the teeth to occupy the space in the embrasures. However, Wiesel does not explicitly disclose that the delivery kit is T-shaped. Cohen teaches a dental carrier film that is appropriately T-shaped (Figure 7; column 3, lines 20-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to make the carrier film T-shaped in order to position said carrier on the tooth so that it contacts both the end and either the front or rear face of said tooth as taught by Cohen. Additionally, the carrier of Subelka et al., as shown especially in Figure 4, has a cover (50) that is spaced from the composite (11) and not in direct contact therewith. Figures 6-7 further show a plurality of unit packages (10) which are dome-like and disposed serially in side-by-side relation on a packaging strip. Lastly, Subelka et al. disclose the use of perforations (70) on the packaging strip to separate the compules (Figure 6).

### ***Response to Arguments***

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

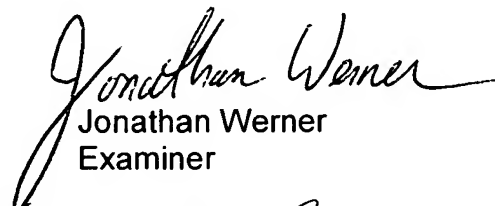

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Werner whose telephone number is (571) 272-2767. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

11/28/07

  
Jonathan Werner  
Examiner  
  
MELBA N. BUMGARNER  
PRIMARY EXAMINER